

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

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MARTHA FAYE BRANNON,
Individually and as Next Friend of
V [REDACTED] J [REDACTED] C [REDACTED], a minor,
and TYRELL FLOYD,

Plaintiffs,

v.

SWANSON LOGISTICS, LLC,
TOMMY T. FISHER, et al.,

Defendants.

CIVIL ACTION NO. 3
1:20-cv-00619
BRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Removed from Henry County Circuit
Court, Case No. 37-CV-2020-900044.00

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Rule 81(c) of the Federal Rules of Civil Procedure, and M.D. Ala. LR 81.1, Defendants Swanson Logistics, LLC and Tommy T. Fisher give notice of and consent to the removal of this case from the Circuit Court of Henry County, Alabama, to this Honorable Court, and, as grounds therefore, state the following:

1. This is a negligence/wantonness case arising out of a motor vehicle accident.
2. This lawsuit was originally filed by Plaintiffs Martha Faye Brannon, individually and as next friend of W [REDACTED] J [REDACTED] C [REDACTED], and Tyrell Floyd on July 22, 2020, in the Circuit Court of Henry County, Alabama, and assigned Case No. CV-20-900044.00. Plaintiffs named Swanson Logistics, Tommy T. Fisher, and Fictitious Parties A-F as Defendants.
3. Defendant Swanson Logistics was served with Plaintiffs' Complaint by way of certified mail delivered to Swanson Logistics' registered agent Charles Swanson at Swanson Logistics' registered office address in Carver, Minnesota, on July 28, 2020.

4. Defendant Tommy T. Fisher was served with Plaintiffs' Complaint by way of certified mail delivered to him at his residence at 5158 Russell Ave. N., Minneapolis, Minnesota, on July 28, 2020.

5. The Complaint expressly seeks compensatory and punitive damages in an amount "not less than one million dollars." This sum demanded in the initial pleading, which sum exceeds the necessary jurisdictional threshold, is deemed to be the amount in controversy. 28 U.S.C. § 1446(c)(2).

6. As a result, this Notice of Removal is filed "within 30 days after receipt by the defendant . . . of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446 (b)(1). Therefore, this Notice of Removal has been filed within the time allowed by law. *See* 28 U.S.C. § 1446(b); Fed. R. Civ. P. 6(a).

7. Pursuant to 28 U.S.C. § 1446(d), Defendants have this day served a copy of this Notice of Removal on the Clerk of the Circuit Court of Henry County, Alabama and the Plaintiff by filing the same with the state court's electronic filing system (AlaCourt).

8. The documents attached hereto as Exhibit 1 constitute a copy of the process, pleadings, and orders filed in the state court proceedings.

DIVERSITY JURISDICTION

9. This Notice of Removal is based on diversity jurisdiction. 28 U.S.C. § 1332.

10. To confer diversity jurisdiction, the amount in controversy between each of the parties must exceed the sum or value of \$75,000.00 exclusive of interest and costs. 28 U.S.C. § 1332(a). Moreover, the action must be brought "between citizens of different states." 28 U.S.C. § 1332(a)(1).

I. THE PARTIES ARE COMPLETELY DIVERSE.

11. Plaintiffs reside in Henry County, Alabama, and are, therefore, citizens of the State of Alabama. (Complaint at ¶¶ 1-2.)

12. Defendant Tommy T. Fisher resides in Minnesota, and is, therefore, a citizen of the State of Minnesota. (Complaint at ¶ 4; Declaration of Tommy T. Fisher, attached hereto as Exhibit 2.)

13. Swanson Logistics is a Minnesota limited liability company whose sole member, Charles Swanson, resides in Minnesota, making Swanson Logistics a citizen of the State of Minnesota for diversity jurisdiction purposes. (Declaration of Charles Swanson, attached hereto as Exhibit 3.) *Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004). Information from the Minnesota Secretary of State's website concerning Swanson Logistics is attached hereto as Exhibit 4.

14. The citizenship of defendants sued under fictitious names shall be disregarded. 28 U.S.C. § 1441(b)(1).

15. Because Fisher's and Swanson Logistics' states of citizenship (Minnesota) are different from Plaintiffs' states of citizenship (Alabama), complete diversity exists in this case.

II. THE AMOUNT IN CONTROVERSY EXCEEDS THE JURISDICTIONAL THRESHOLD.

16. Plaintiffs' Complaint demands judgment against Defendants "for compensatory damages and punitive damages in an amount determined by a jury and not less than one million dollars." (Complaint, at *ad damnum* clauses, pages 4-9.) Thus, Plaintiffs' Complaint expressly


requests a sum exceeding the necessary jurisdictional threshold. This sum demanded in Plaintiffs' initial pleading is deemed to be the amount in controversy. 28 U.S.C. § 1446(c)(2).¹

17. As a result, the amount in controversy in the present case exceeds \$75,000, exclusive of interest and costs.

18. Based on the foregoing, this action is one over which this Court has original jurisdiction pursuant to the provisions of 28 U.S.C. § 1332, and this action is removable under 28 U.S.C. §§ 1441, *et seq.*

WHEREFORE, Defendants Swanson Logistics, LLC and Tommy T. Fisher respectfully remove this action from the Circuit Court of Henry County, Alabama, bearing civil action number 37-CV-2020-900044.00.

Respectfully submitted,


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¹ The demand of \$1,000,000 in Plaintiff's Complaint necessarily indicates that the claims of (at least) one of the three named Plaintiffs satisfy the \$75,000 amount-in-controversy requirement. Accordingly, in the event that the claims of any other named plaintiff do not exceed the amount-in-controversy requirement, this Court may exercise supplemental jurisdiction over the claims of the other plaintiff(s) as they are part of the same case and controversy as those of the plaintiff(s) who allege sufficient amount in controversy. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 549, 559-567 (2005).

Likewise, the demand of \$1,000,000 also necessarily indicates that the claims of (at least) one of the three named plaintiffs against (at least) one of the two named defendants satisfy the \$75,000 amount-in-controversy requirement. Regardless, where defendants are alleged to be jointly liable (as Swanson Logistics and Tommy T. Fisher are alleged to be in Plaintiffs' Complaint), damages are appropriately aggregated against multiple defendants. *State Farm Mut. Auto. Ins. co. v. Health & Wellness Servs., Inc.*, 389 F. Supp. 3d 1137, 1152 (S.D. Fla. June 10, 2018).

CERTIFICATE OF SERVICE

I hereby certify that on the date of filing, I served the foregoing on counsel of record by placing a copy of the same in the United States Mail, first-class postage prepaid as follows:

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